

STATE OF TEXAS §  
COUNTIES OF ARANSAS §  
SAN PATRICIO AND NUECES §  
CITY OF ARANSAS PASS §

On this the 17<sup>th</sup> day of April, 2007 the Aransas Pass Municipal Development APMDD convened in a Regular Meeting being open to the Public at the regular meeting place thereof in the City Hall and notice of said meeting giving the time, place, date and subject hereof having been posted and prescribed by Chapter 551 of the Texas Government Code with the following attendance to wit constituting a quorum.

ARANSAS PASS MUNICIPAL DEVELOPMENT (APMDD)

PRESENT:	DON MCTEE	President
	HOPE COMINGORE	Vice President
	RANDALL FREEZE	Secretary
	MIKE SULLINGER	Treasurer
	HARLAN ROBERTS	Director
	HAROLD HEES	Director
	JIM COVINGTON	Director
	RICHARD HEAD	Director
	RAYMOND STONE	Director
	VACANT	Director

ABSENT:	VICKIE ABREGO	Director
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CITY COUNCIL

PRESENT:	FRANK HAMETNER	Mayor
	TOMMY KNIGHT	Mayor Pro Tempore
	JAY ATTAWAY,	Council Member

ABSENT:	GRACE CHAPA,	Council Member
	VICKIE ABREGO,	Council Member

ADMINISTRATIVE PERSONNEL PRESENT:	Mike Sullinger,	Interim City Manager
	Allen Lawrence,	City Attorney
	Ada Owens,	City Secretary
	Darren Gurley,	Public Works Director
	Sandy Roddel,	Finance Director
	Bonnie Mauer	Aquatics Center Manager

OTHERS PRESENT: Jerry & Marsha Wellman, Irene Irey, Lu & Ralph Arcemont, Karen Gayle  
(There may have been others present who did not sign in.)

ITEM 1.

**CALL MEETING TO ORDER**

President McTee called the Meeting to order at 6:30 P.M. on April 17, 2007. President McTee stated there was a quorum present.

ITEM 2.

**CONSIDER AND ACT ON FUNDING OF SWIMMING POOL DEFICIT.**

President McTee stated the City's financial report for 2004, 2005, and 2006 showing the deficit from the operation of the pool each year were in the Member's packets. He stated he would like to give some information

and history about the APMDD. The APMDD was form in 1998 for the express purpose of building, from the sales tax, a swimming pool and civic center. The swimming pool was the first project and there was a bond issue for \$4M in 2002. The pool was completed and went into operation in 2004. In the beginning the APMDD was governed by Chapter 377, and is still governed by Chapter 377. In 2002 when money for the pool was being spent the APMDD entered into an Interlocal Agreement with the City. He stated the City's request to pay for the deficit on the swimming pool is new to the APMDD as they had never paid any operating expenses for the pool in 2004, 2005, or 2006 so there was no precedent established.

President McTee stated in Chapter 377.072(c) the APMDD may use money in the development project fund only to: (3) pay the costs of operating or maintaining one or more development projects during the planning, acquisition, establishment, development, construction, or renovation or while bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding. He stated in speaking with the APMDD counsel, Mr. John Bell, Mr. Bell pointed out that the paragraph did permit, with Board approval, payment of maintenance and operating costs while the bonds are outstanding. He stated the Interlocal Agreement with the City of Aransas Pass and APMDD, page 3, Duties of the City-section 1.1 The City will own and construct the Initial Projects and is responsible for all aspects of the construction, acquisition, design, upkeep, maintenance and operation of the Initial Projects and in connection therewith, the City shall comply with all applicable law relating to the construction of public works, including, without limitation, the provisions of Chapter 2253, as amended, Texas Government Code, so this is in conflict with Chapter 377. He stated if the Board goes ahead and agrees to fund the operation and maintenance of the swimming pool, the APMDD will have to make a new Interlocal Agreement. He stated the Board does not want to go any further until this is resolved.

President McTee stated the Board had a few options. The Board could approve it the request for funding the pool deficit), approve it with modifications, deny the request or table it for future consideration. He stated he was opposed to paying for the operation of the swimming pool deficit. He stated he thought the funds the APMDD had on hand were earmarked for the civic center, which is one of the things the citizens voted on in 1998. He stated he thought the City had a responsibility to the citizens to operate the swimming pool in the most cost effective manner possible, realizing it may never be a break-even situation. He stated he thought any diversion of APMDD funds, away from the civic center, would severely hamper the ability to build the civic center, especially in the expanded mode considered for the schools. He stated the Board did not have the costs on the parking and other expenses and would have to borrow the money to build them. The APMDD needed to maintain a fund balance to be fiscally responsible. The APMDD was actually guaranteeing to the City that the APMDD has the money to pay the bonds. He stated if the APMDD starts withdrawing funds for the day-to-day operation of the pool it will cripple and delay our civic center project which is our commitment to the citizens.

Director Roberts stated the Interlocal Agreement is obviously in conflict with Chapter 377. He stated he sees the APMDD as created to benefit the citizens, he did not think, as a municipal development district, the

APMDD could continue to give the City projects they cannot afford to pay for because it will trickle back to the taxpayers who have already contributed with their ½ cent sales tax. He stated the pool loses \$150,000.00 a year and the civic center is projected to lose \$200,000.00 to \$300,000.00 a year, which would be a burden for the taxpayers to handle. He stated he did not think the APMDD should move forward with projects until the APMDD knows it can fund them, right now we know the APMDD can fund the pool. He stated he would rather delay the civic center rather than create a burden on the taxpayers. The APMDD must answer to the taxpayers and also have a say in the project's management, but not continue to own it. He stated he would rather the APMDD pay the deficit, fix the pool and not create a burden on the citizens.

President McTee asked why can't the City pay? The City has a lot of other projects which money is invested in, but they chose those over the pool operation. The City has \$1.2M in real estate the City paid cash for and that money was spent out of City coffers, properties were taken off the tax rolls. He stated the City also has a new Public Works facility for \$1M, a new animal control facility, proposed renovations for City Hall, but the City can't maintain the swimming pool.

Treasurer Sullinger stated he agreed with both to an extent. He stated he agreed with President McTee that the City need to be responsible to the citizens. He stated there was nothing wrong with the new Public Works facility and other things, mistakes may have been made in the past, but the Board was not dealing with that right now, the Board was dealing with the swimming pool which is actually a white elephant to the City. He stated it was well intended but has put a burden on our taxpayers because the APMDD was not trying to help support the pool. He stated the Interlocal Agreement was good at the beginning, but he did not think the APMDD and City had any idea what it was going to cost to fund the pool. He stated the citizens set up the APMDD and the APMDD took a ½ cent sales tax on 8,000 people (in the City) and gave them a white elephant that costs \$150,000.00 a year, that's what has happened and that's fine, but now the APMDD is going to use the same 8,000 people and the same ½ cent sales tax and give them another white elephant which is going to cost \$200,000.00 a year. For those 8,000 people that is all that ½ cent sales tax is going to stand and maintain those two (pool and civic center). He stated before the APMDD gives the people another white elephant, let the 8,000 (people) grow to 16,000 (people) and then the revenue will be there to support those two projects. Why would the APMDD want to do it (build the civic center) and put another tax on the people in Aransas Pass who have already paid the ½ cent tax to have the pool built and maintained.

President McTee stated that the 8,000 people spoke and said that (pool) was what they wanted.

Treasurer Sullinger stated he did not think the APMDD understood the swimming pool was going to cost \$150,000 a year to operate. The City could take that \$150,000 a year and fix a lot of roads, the water system and other things that are needed, if the City could get that money back.

Discussion was held regarding pools and civic centers not making a profit.

President McTee stated he thought the citizens needed to make that choice. The citizens made that choice initially expecting the City to operate the pool. If the City cannot operate the pool they should tell the people they can't do it.

Treasurer Sullinger stated that was what the City was saying right now, that is why the APMDD was discussing it.

President McTee stated then the APMDD probably does not need to go any farther on it, what the APMDD probably needs to do is take the money available, pay off the bond and abolish the APMDD.

Secretary Freeze stated his understanding was the APMDD's ultimate goal was to eliminate unemployment and create employment, to build structures that would attract people to the City. If the APMDD goes back and starts paying deficit, it would cause the APMDD to be in the management business. He stated it was the APMDD's fiduciary responsibility to know where the money was going.

Discussion was held regarding the pool staff, management of the pool, and potential growth of population.

Director Head stated the APMDD had to decide what they were going to do with the deficit before them tonight. He stated on one hand he agreed with President McTee, it was not the APMDD's job to run the pool or pay the deficit. On the other hand, if the APMDD did not pay the deficit, it would place the deficit on our 8,000 citizens.

Discussion was held regarding sales tax and City ad valorem tax.

Director Roberts introduced Ms. Karen Gayle, a former Mayor and APMDD member, and asked her to speak regarding the pool.

Ms. Gayle stated when the ½ cent sales tax became available to the APMDD, the Board conducted a survey to see what the citizens wanted and they wanted a swimming pool and civic center, so by popular vote the swimming pool was built first. The money (from the sales tax) was coming in and the project was started and that was when the first interlocal agreement came about. The APMDD needed money to pay for the pool as the construction costs started coming in. The City paid those bills with the agreement that the APMDD would reimburse the City for all the money. The APMDD was a separate entity from the City although they were intertwined during the initial construction cost and phases to keep the project going. There was supposed to be a separation at the end.

Vice President Comingore stated the APMDD turned the pool over to the City after paying the operating costs for one year. She asked Ms. Gayle did she remember that?

Ms. Gayle stated from what she remembered the APMDD was financially responsible for the pool and a lot of money flowed from the City into the APMDD checking account. There was an interlocal agreement between the City and APMDD to get the money flowing so the pool construction could start. At some point there was supposed to be a division between the City and APMDD because the APMDD was supposed to stand alone and not be subsidized by the City. She stated one of the APMDD's

concerns was long term maintenance of the pool and where the money would come from and would there be enough sales tax support to continue the operation and maintenance of the pool on a long term basis. Would there be enough money to do that and move ahead with the next project. It would depend on the growth of the City. When there was enough growth of the City and the APMDD would then start the next project. The APMDD was responsible for the pool and its cost.

City Attorney stated the interlocal agreement states the City will maintain the pool but the Resolution adopting the interlocal agreement says "Whereas, the agreement attached hereto as Exhibit A has been approved by the Board to provide for the transfer of funds, being a portion of the Sales Tax, by the District to the City to pay the debt service requirements on the Certificates, to acquire, plan, construct, maintain, and operate the Project and to pay certain other costs of the Project as permitted by the Act;"

Discussion was held regarding who was responsible for the paying the cost of maintaining the pool.

Mayor Hametner stated they could get involved in legalese and interpreting documents but they all needed to work together to get things done for the people in Aransas Pass. He stated he did not believe they had private entities, one being the City, one being the APMDD and the other being the people, he thought all they had was people which included everyone. And how does this community go forward funding the things that needed to be funded, providing the services that needed to be provided and getting it all done? The documents clearly give the APMDD the ability to transfer funds to the City to pay for maintenance and operation of the pool.

Secretary Freeze stated the APMDD could put the civic center on hold for now and should listen to the ideas from pool staff for making the pool more productive and efficient then put some money into renovations and changes to make the pool more profitable.

Treasurer Sullinger stated he disagreed that the APMDD should put the civic center on hold. He stated he thought the APMDD had plenty of money to go ahead with the civic center, to repair the pool and pay the City back. He stated he saw no reason not to build the civic center, pay the City back the pool deficit that the APMDD rightfully owes and repair the pool. There was plenty of money and they had the bond issue.

Director Head stated even by moving forward the APMDD was not looking at a great expenditure between now and the end of this year. He stated he felt the APMDD needed to take care of the deficit with the pool. There were some real maintenance issues at the pool that needed to be addressed that would get worse.

Vice President Comingore stated there has been a deficit running and the City has paid for it. The City is asking the APMDD for help paying the operating cost deficit. She stated there needs to be checks and balances and if the Board does not want to get involved, and should not get involved, in the operation or management of the pool then the APMDD needs to work in cooperation with the City and maybe partially fund the operating deficit so there is an incentive for the City to do something to save money. There should be repairs over the entire pool

to make it into a first class operation. She stated she thought the APMDD should give the City part of the operating deficit and fund the renovations the pool will require over the next year or so.

Mayor Hametner stated he was glad this incident made the APMDD take a close look at the pool operation and find those deficiencies that need to be addressed. It is true they need to have a class operation at the pool and maintain a class operation.

Director Covington asked what would be the advantage or disadvantage of splitting difference with the City?

Director Hees stated he did not think that met with the Resolution. He asked were overruns expected on the pool? Were the overruns put in the City's budget?

Treasurer Sullinger stated no, the deficit was funded as they went. The City knew there would be a big loss every year.

Director Covington stated on page 2, the interlocal agreement reads "the City and District expressly acknowledge and recognize that any Sales Tax proceeds may only be utilized to pay the costs of planning, acquiring, establishing, developing, constructing, or renovating a development project as provided in Section 377.072(c)(1) of the Act, including, but not limited to, the Initial Projects and subject to the limitations contained in the Act and the Election." He stated that told him that the APMDD could not do anything unless the interlocal agreement was changed.

The City Attorney stated there were also provisions in the Interlocal Agreement that say the APMDD will be governed by Section 377. Section 377 also includes the provision in regards to payment of maintenance and operation expenses so long as there are bonds outstanding.

President McTee stated Section 377 states "may," not that the APMDD has to (pay operation and maintenance costs).

The City Attorney stated that is true, but the Resolution says the APMDD "will."

President McTee stated the Resolution says they will, but the attachment (interlocal agreement) says the City will (pay for operation and maintenance), so there is a conflict.

The City Attorney stated no, it says the City will maintain, but the Resolution say the APMDD will give the City the money to maintain it (pool).

Mayor Pro Tempore Knight stated speaking as a taxpayer, it was his understanding that the APMDD would fund the operation of the pool and he voted for it. He stated if he had known the City was going to be stuck with the operation, he would have voted against it.

President McTee stated he had spoken to Mr. Bill St. Clair, Mayor at that time, and Mr. St. Clair had told the Council that this was a great step forward but there were going to some expenses and challenges.

The City Attorney stated as he recalled that was during the time the City was trying to get Section 377 passed by Legislature. Mr. St. Clair was Mayor at that time. The Resolution was passed when Ms. Karen Gayle was Mayor.

Director Stone made the motion to separate the two items and that the APMDD do a construction project to correct the physical deficiencies out of APMDD expense and the operating expense be a separate item that would be voted on separately. He stated he thought that would clarify the APMDD intentions from this day on and the APMDD could do a renovation project with the funds they have to correct those (pool) deficiencies. He stated he thought everyone on the Board should be in favor of finishing the pool project and correcting those deficiencies with a renovation project.

Director Roberts asked Director Stone if he meant that the APMDD do the repairs and refurbishing and the APMDD would pay for that (the repairs and refurbishing) to get the pool back to standard?

Director Stone stated right.

Director Roberts seconded the motion to separate the items.

Treasurer Sullinger asked and they would vote on the funding?

Director Stone stated no, the renovation would be accepted and funded by the APMDD, then the other issue would be discussed separately for a future vote (which is) whether the APMDD will pay the operating deficit, which could be voted on tonight.

President McTee called for a vote on the motion and second and the motion carried 8 to 1 with President McTee voting no.

Vice President Comingore made the motion to split the operating deficit expense with the City.

Director Roberts asked could the APMDD split the past deficit of \$444,551 with the City and then proceed on a 50/50 split with the City?

Vice President Comingore stated the City did not ask the APMDD for that, the City asked the APMDD to talk about the deficit and the operating cost.

Vice President Comingore amended her motion to say: the APMDD pay back 50% of the current operating deficit the City has brought to the APMDD's attention, \$444,551. Director Roberts seconded the motion and the motion carried 8 to 1 with President McTee voting no.

Discussion was held regarding future deficit on the operation and maintenance of the pool.

Director Roberts made the motion that the APMDD pay 50 percent of the future yearly deficit of the pool until the bonds are paid. The APMDD would have no management rights, but have the right to view the budgets and deficits. Director Head seconded the motion and the motion

carried 6 to 3 with President McTee, Vice President Comingore and Secretary Freeze voting no.

**ITEM 3.**

**ADJOURNMENT OF MEETING**

Vice President Comingore made the motion to adjourn. Director Roberts seconded the motion and the motion carried unanimously

President McTee adjourned the meeting at 7:40 p.m.

ATTEST:

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Don McTee, President

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Randall Freeze, Secretary